IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.7287/07
Phool Chand Sen Vs. Vinit Kumar & Anr.

4.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Veyankatesh Garg for petitioner.

The petitioner has challenged the order dated 1.6.07 whereby the learned trial court has allowed the application of the plaintiff and permitted him to exhibit the documents enclosed with affidavits as Exhibits 1 to 16. The application has been allowed on the ground that although those documents were filed with the affidavit and cross examination of the affidavit has also taken place, the exhibits could not be marked upon them due to inadvertence. The contention of the learned counsel for the petitioner is that when the documents

have been allowed to be marked as exhibits in the trial, the plaintiff as a witness in the trial has to recall so as to enable the defendant-petitioner for subjecting to cross examination in relation to those documents. Learned counsel for the petitioner has relied on the judgment in the case of S.S.S. Durai Pandian Vs. S.A. Samuthira Pandian-AIR 1998 Madras 323 and Devi Lal & Ors. Vs. Gurjeet Kaur & Ors., 2004(3) DNJ (Raj.) 1429.

On perusal of the record, I find that this prayer made by the petitioner is wholly misconceived because the lerned trial court while rejecting such prayer has clearly noted that the documents Exhibit 1 to 16 were already on record having been originally filed with the affidavit of the plaintiff and cross examination of the plaintiff was made by

the advocate of the petitioner not only on affidavit but also in regard to documents referred to in the affidavit. The trial court allowed the application of the petitioner only because due to inadvertence the documents could not be formally exhibited in evidence. The judgments relied on by the learned counsel for the petitioner are distinguishable on facts and therefore cannot be applied to the present case.

In the facts of the case, I do not find that the order passed the learned trial court suffers from any such error as may warrant interference by this Court.

The writ petition stands dismissed.

(Mohammad Rafiq),J.

Rs/-